IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940

312
1

No. 637

abr. Ame

MEYER ABRAMS,

Petitioner,

vs.

LEHIGH VALLEY RAILROAD COMPANY, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SPECIAL COURT OF THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA, AND BRIEF IN SUPPORT THEREOF

MEYER ABRAMS,
Petitioner,
Counsel Per Se.

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INDEX.

	PAGE
Petition for Writ of Certiorari	1
Statement of the matter involved	1-2
Question presented	2-3
Reasons for the allowance of the writ	3
Prayer for relief	3
Brief in support of petition	4
I. The jurisdiction to grant the writ	4
II. Opinion below	4
III. Statement of the case	4-5
IV. Points relied on for reversal	5
Argument	6
Summary of the argument	6
I. Section 1125 is a limitation on the power of the Railroad to incur expenditures without the approval of the court but is not a limitation on the powers of the court to allow compensation to attorneys who rendered services to the estate in connection with the proceedings of which it had jurisdiction of the parties and subject matter	6
(a) Section 1225 is no limitation on Section 1213 and the two sections require a reasonable construction	6

PAGE

(b) The Bankruptcy Act is remedial and requires a liberal and reasonable construction 7-9

(c) Under the rule of reasonable and liberal construction the allowance of compensation cannot be confined to such compensation as the debtor was inclined to pay but to such compensation which justice dictates should be paid as a result of the jurisdiction invoked 9-10

II. The Special Court is vested with the joint power of a court of equity and a court of bankruptcy under Section 1213, and in such capacity its power or authority is unlimited as to any subject matter involved in the proceedings under the Railroad Adjustment Act 10-11

(a) Under its equity powers the court has inherent powers to allow fees to attorneys representing creditors who performed services of value to the estate regardless of whether or not it had any fund in its possession..... 11-14

(b) The Special Court was also vested with the general power of a Court of Bankruptcy, and the power to allow the compensation was inherently in such court in the absence of any restriction by the Act 14-16

Table of Cases.

	PAGE
Baltimore & Ohio R. R. Co., In Re, 34 F. Supp. 154	2, 4, 5, 6
Bear v. Chase, 99 F. 916	7
Case v. Los Angeles Lumber Products Co., 308 U. S. 106	15
First National Bank v. LaSalle-Wacker Building Corp., 280 Ill. App. 188	12
Freeman v. Shreve, 86 Pa. 135	12
Gervin v. Marconi Wireless Tel. Co., 275 F. 486	10
Grier v. Kennan, 64 F. (2) 605	8
Irving-Austin Bldg. Corp., In Re, 100 F. (2) 574	16
Many v. Hood, 37 F. (2) 212, 214, C. C. A. 4	7
Montgomery v. Equitable Life Ass. Co., 83 F. (2) 758	10
Riggs v. Palmer, 115 N. Y. 506, 22 N. E. 188	8
Siebert v. Minneapolis & St. L. Railway Co., 58 Minn. 58	13
Sofian v. Congress Realty Co., 98 F. (1) 499	15
Trustees v. Greenough, 105 N. S. 527	12
United States v. Equitable Trust Co., 283 U. S. 738	12
United States v. Kirby, 7 Wall. 482, 483, 19 L. Ed. 278	9
U. S. v. Sischo, 262 U. S. 165	9
Wallace v. Fiske, 80 F. (2) 897	11-14
Watco Corporation, In Re, 95 F. (2) 249	16

Other Authorities Cited.

PAGE

49 A. L. R. p. 1150 11

107 A. L. R. p. 750 12

Collier on Bankruptcy, 13th Ed. 1940, Vol. II, Sections 23.03 and 23.04 14

Statutes Cited.

Chapter XV, Chandler Act:

Section 1213 ..... 11, 14

Section 1215 11-12

Section 1225 ..... 2, 5, 6, 9, 10

Section 1245 4

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SPECIAL COURT OF THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Meyer Abrams, prays the issuance of a Writ of Certiorari to the Special Court organized under the Railroad Adjustment Act in the District Court of the United States for the Eastern District of Pennsylvania to review its order of October 21, 1940, denying compensation to the petitioner on jurisdictional grounds.

Statement of the Matter Involved.

The Lehigh Valley Railroad Company and three of its subsidiary corporations filed their petitions on

August 7, 1939, seeking relief under the provisions of Chapter XV of the Bankruptcy Act (11 U. S. C. A. (c) (15)). A Special Court of three judges was at once convened as directed by Section 713 of the Bankruptcy Act (11 U. S. C. A. Sec. 1213). Thereupon (R. 1-2) the court approved the petitions as properly filed, directed that hearings be had and at the conclusion of its hearings rendered its opinion on August 7, 1940, approving the Plan and entered its decree on the same day.

Petitions for fees were filed by leave of court. Petitioner, counsel for the Harvard State Bank, one of the creditors, filed his petition for fees pursuant to the order. The court entered its order on October 21, 1940, allowing fees only to the parties and attorneys whose debts were incurred by the debtor and denied compensation to petitioner and others who were retained by creditors, on the ground that only expenses incurred by the debtor may be allowed and that the court was without jurisdiction to allow any compensation to attorneys for creditors to which the debtor did not consent even if the services were valuable (R. 3-4). Its decision was based on the opinion *In Re Baltimore & Ohio R. R. Co.*, 34 F. Supp. 154.*

Question Presented.

The only question presented is the correctness of the construction of Section 1225 (6) as a limitation on the power or jurisdiction of the court to allow compensation to attorneys for creditors even when their services were beneficial to the estate. The merits of the services are not for review here for the reason that the court denied the compensation on lack of jurisdiction to allow any

* A petition for certiorari was also filed here by Isidore H. Schweidel, another attorney who was denied compensation by the same order. We suggest that both petitions be considered simultaneously. The decision reported in 34 F. Supp. p. 154 is involved in the petition for certiorari in case number 598-599.

expenses and compensation for services rendered by attorneys for creditors who were not engaged by the debtor.

Reasons for the Allowance of the Writ.

1. The Special Court decided an important question of Federal Law which has not been but should be settled by this court.

2. The decision is in conflict with applicable decisions of this court pertaining to the inherent jurisdiction of Equity and Bankruptcy Courts to allow compensation to attorneys who rendered services for the benefit of an estate administered there.

3. The decision that in a proceeding to approve a debtor's Plan affecting the rights of creditors only such fees to attorneys whom the debtor was willing to retain may be paid out of the estate and that each creditor who is brought into the proceedings must personally pay expenses and fees (no matter how valuable the services were to the whole estate) is not in harmony with the accepted and usual course of judicial proceedings in reorganization matters.

4. The decision placed a narrow and unreasonable construction on the most recent amendment to the Bankruptcy Law and the writ should be issued to give effect to the legislative intent.

Prayer for Relief.

Petitioner therefore prays the allowance of a Writ of Certiorari to the three-judge Special Court appointed under the Railroad Adjustment Act in the District Court of the United States for the Eastern District of Pennsylvania, to the end that the order of October 21, 1940, be reversed with directions to consider petitioner's petition on its merits.

MEYER ABRAMS,
Petitioner.

BRIEF IN SUPPORT OF PETITION.

I.

The Jurisdiction to Grant the Writ.

The jurisdiction to review the order of the Special Court is invoked under Section 745 of Chapter XV of the Chandler Act (11 U. S. C. A. Sec. 1245) which authorizes a review by this court on certiorari within sixty days from the entry of any final order. The order was entered October 21, 1940 and the petition is filed within the sixty-day period under Section 745.

II.

Opinion Below.

In deciding that petitioner was not entitled to compensation on jurisdictional grounds the court did not render any opinion but adopted the decision of the Special Court in the *Baltimore & Ohio R. R.* case (34 F. Supp. 154).

III.

Statement of the Case.

This case involves the question whether or not the Special Court under the Railroad Adjustment Act had jurisdiction to allow compensation to petitioner who represented a creditor and performed services in the proceedings. The court held that attorneys for creditors may not recover any compensation (no matter how valuable their services were) as long as the expense

was not incurred by the debtor, on the ground that it was without jurisdiction to allow such compensation. Its decision was based on the opinion of Judge Chestnut in the *B. & O.* case (34 F. Supp. 154).

IV.

Points Relied on for Reversal.

1. The court erred in construing Section 1225 of the Railroad Adjustment Act as a limitation on its power or jurisdiction to allow compensation to attorneys for creditors who rendered valuable services to the estate. It was its duty to construe that section as a limitation and restriction on the debtor not to incur any expenses without the approval of the court but not as a limitation on the power or jurisdiction of the court.

2. The Special Court possessed powers of a court of equity and of a court of bankruptcy and the allowance of compensation for beneficial services rendered to an estate was inherently in such court.

3. The Railroad Adjustment Act is remedial, calling for a liberal and reasonable construction. The court erred in giving the Act a narrow and unreasonable construction as to limit its jurisdiction to fees and expenses incurred by the debtor and not by the creditors.

ARGUMENT.

I.

Section 1125 is a limitation on the power of the Railroad to incur expenditures without the approval of the court but is not a limitation on the powers of the court to allow compensation to attorneys who rendered services to the estate in connection with the proceedings of which it had jurisdiction of the parties and subject matter.

The Special Court adopted the opinion in the *Baltimore & Ohio* matter (34 F. Supp. 154) to the effect that Section 1225 was a limitation on the power or jurisdiction of the court to pay compensation to attorneys for creditors even if their services were beneficial to the estate. The opinion in the *Baltimore & Ohio* matter is basically unsound.

(a) Section 1225 is no limitation on Section 1213 and the two sections require a reasonable construction.

A proper construction of Section 1225(6), on which the opinion relied will lead to the conclusion that it *is not a restriction or limitation of the power of the court to allow compensation, but is a restriction on the powers of the Railroad* to incur large expenditures without the approval of the court. This section was evidently inserted because the power to manage the affairs of the Railroad by the appointment of a Receiver or Trustee *was taken away from the court.* Congress had to find a way of protecting the estate against large expenditures over which the court had no control. In other words, Congress did not want, on the one hand, to deprive the

creditors of their remedies and deprive the courts of their power to protect the creditors, and on the other hand to give the absolute power to the debtor to incur all expenses during such period. *It therefore limited the debtor's power* to expend the funds without the sanction of the court. *This was in no sense a limitation on the power of the court to pay for services rendered to the estate on behalf of creditors.*

(b) The Bankruptcy Act is remedial and requires a liberal and reasonable construction.

The National Bankruptcy Act is remedial in its nature and as such must be *reasonably* and *liberally* construed as to "promote justice." (*Bear* v. *Chase,* 99 F. 916, 920; *Many* v. *Hood,* 37 F. (2) 212, 214, C. C. A. 4.) In construing the meaning of a statute and the intent, under the doctrine of "reasonable" or "equitable" construction, courts must bear in mind the principle that the legislature, if it performs its functions properly, has as its ultimate intent the enactment of laws founded on recognized *concepts of justice, common sense and reason* —all of which operate to control the legislature in the performance of its law-making function. These concepts are those adhered to by the people of the state. Civilized society is founded upon certain standards of ethical conduct. The people have rather definite ideas of what is just and proper, and laws must, in a democracy, harmonize with the general aims and standards of the people. It must be assumed that the law-makers, who represent the people, enact all laws in the light of what the people believe is honest, fair and equitable and in harmony with the public welfare. In other words, the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legis-

lation. Consequently, where the statute or *a suggested construction operates harshly, ridiculously,* or in any other manner contrary to prevailing conceptions of justice and reason, in most instances, it would seem that the apparent, or suggested meaning of the statute, *was not the one intended by the law-makers.* In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, in addition to the apparent or suggested meaning, there is little reason to believe that it represents the legislative intent.

If the basic legislative intent is to promote or advance the people's standards of justice and propriety, then it is surely proper for the courts to be concerned with such intent. All laws should, as a result, be construed with reference to this intent. This doctrine was clearly stated in *Riggs* v. *Palmer,* 115 N. Y. 506, 22 N. E. 188.

In *Grier* v. *Kennan,* 64 F. (2) 605, at page 607, the court said:

> "The paramount duty of the court in construing a statute is to ascertain and give effect to the legislative intent. * * *
>
> So, in *United States ex rel. Gottlieb* v. *Commissioner of Immigration* (C. C. A. 2) 285 F. 295, it is held that 'in construing statutes, it is the duty of the court to endeavor to ascertain the intention and policy of Congress in their enactment, and to make practical application of that intention to the facts of the case.' *A particular construction must not produce inequality and injustice if another and more reasonable interpretation is possible. Knowlton* v. *Moore,* 178 U. S. 41, 20 S. Ct. 747, 44 L. Ed. 969.
>
> All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence, and it will always be presumed that the legislature intended exceptions to its lan-

guage, which would avoid results of this character.' *United States* v. *Kirby,* 7 Wall. 482, 483, 19 L. Ed. 278.

The legislative intent must be determined from the act as a whole with especial regard to the circumstances surrounding the Legislature at the time of its enactment; and *'remedial statutes will be liberally construed, to give effect to the humane purpose of the legislature.' Camunas* v. *New York & P. R. S. S. Co.* (C. C. A. 1) 260 F. 40, Rev. St. U. S. Sec. 1042 (section 641, 18 U. S. C. A.) is a remedial statute. *United States* v. *Pratt* (D. C.) 23 F. (2d) 333, 334." (Italics supplied.)

In the light of the foregoing it is reasonable to construe that Congress intended to limit the expenses which the debtor was to incur and not to limit the power of the court to allow expenses which are a proper charge on the estate for services performed beneficial to the estate. Section 1225(6) authorizes the court to pass upon "amounts" or considerations "directly or indirectly" paid or to be paid. The term "direct" may well refer to expenditures incurred by the debtor while the term "indirect" refers to allowances by the court as a result of the jurisdiction invoked by the debtor to attorneys representing parties to the litigation.

(c) Under the rule of reasonable and liberal construction the allowance of compensation cannot be confined to such compensation as the debtor was inclined to pay but to such compensation which justice dictates should be paid as a result of the jurisdiction invoked.

The implications and intendments arising from the language of a statute are as much a part of it as if they had been expressed. (*U. S.* v. *Sischo,* 262 U. S. 165.) *The implication may be compelled by a reasonable view of the statute,* the contrary of which would be *ridiculous or*

absurd. (*Gervin* v. *Marconi Wireless Tel. Co.*, 275 Fed. 486.) It would be *unreasonable to construe* that Congress intended to enable the debtor to enter into contracts *to pay fees and compensation to those who would favor its plan* and not to allow any compensation to the parties who are brought into the proceedings for the purpose of testing the fairness and feasibility of the Plan. The Act provides that the court must find that the Plan is fair and reasonable and does not discriminate. A court cannot properly determine such issues if the only persons who will be paid for their expenses will be those *who will sponsor the plan,* and the individual investors, widely scattered all over the country, will have to present the questions at their own expense. Such a *narrow construction* should not be placed on this Act. A liberal and reasonable construction leads to the irresistible conclusion that the *restriction or limitation of expenditures has reference to expenditures that the petitioner or debtor may incur. It is not a limitation on the power of the court to compensate attorneys who have contributed to the understanding of the problems and to the protection of the interest of the investors.* The question here is not the "exercise of the power" but the "power" to decide on the allowance and there was no limitation on the "power to decide." (*Montgomery* v. *Equitable Life Ass. Co.*, 83 F. (2) 758.) The distinction between the "power to decide" and the "exercise of the power" was entirely overlooked.

II.

The Special Court is vested with the joint power of a court of equity and a court of bankruptcy under Section 1213, and in such capacity its power or authority is unlimited as to any subject matter involved in the proceedings under the Railroad Adjustment Act.

The opinion of Judge Chestnut, which was adopted by the Special Court, is based on Section 1225 with regard

to *"approval* of *expenditures"* and upon his construction that the nature of the case is not one where a court of equity has general jurisdiction over "a fund" in its control or possession. He entirely overlooked Section 1213 which reads:

> "such three-judge court *shall be vested* with and shall exercise *all* the powers of a district court sitting in *equity* and *all* the powers as a court of *bankruptcy* necessary to carry out the intent and provisions of this chapter, including the classification of claims at such time and in such manner as the court may direct." (Italics supplied.)

The Special Court was therefore vested with all the powers of *equity* and *bankruptcy* courts, without limitations.

(a) Under its equity powers the Court has inherent powers to allow fees to attorneys representing creditors who performed services of value to the estate regardless of whether or not it had any fund in its possession.

It is well settled that in the absence of a statute, *a court of equity has the inherent power to allow compensation* for services rendered by attorneys which are *beneficial to the estate.* It is not necessary that the court be possessed of a "fund" but it is sufficient if the court has *constructive possession* of the "res." (*Wallace* v. *Fiske,* 80 F. (2) 897, 901.) While the Railroad Adjustment Act has taken away the power of the court to take *actual* possession by the appointment of a Trustee or Receiver, *it was expressly given the constructive possession by the terms of the Act* (Chap. 15, Sec. 1215).

The authorities on the point that a court of equity has the inherent "power" to allow such compensation are abundant and are collected in 49 A. L. R. at page 1150, and in the subsequent annotation in 107 A. L. R.

at page 750. Among the cases cited is *United States* v. *Equitable Trust Co.,* 283 U. S. 738, and *First National Bank* v. *LaSalle-Wacker Building Corp.,* 280 Ill. App. 188, which cites many decisions of this court in support of the proposition that a court of equity may allow compensation to attorneys representing parties who were helpful to the court in passing upon a reorganization plan, *even where no fund was brought into the court.* There, attorneys for some bondholders *opposed* a reorganization plan and made suggestions for its modification. The Railroad Adjustment Act under Section 1215 gave the court the *"exclusive jurisdiction of the petitioner and its property, wherever located."* The *court* was therefore possessed of the property and of the funds. The cases applicable to instances where attorneys bring in funds to a court have *no application to cases involving the administration of trusts where the court has constructive or actual possession of the trust.* In such cases it is not a question of jurisdiction to allow the fee or the power or authority to do so but *the exercise of discretion.* In some instances the court may even allow compensation to a losing party where the party was brought into the proceeding and his attorney was compelled to defend, as said in *Freeman* v. *Shreve,* 86 Pa. 135, on page 138:

> "He will often order such *compensation to counsel for a losing party* who is decreed to have no interest, on the equitable ground that being a necessary party he was compelled to litigate or had sufficient reason. *It is a charge which the fund ought in equity and good conscience to bear."*

In *Trustees* v. *Greenough,* 105 U. S. 527, the court held that attorneys representing bondholders who are brought into the litigation may be allowed fees out of the trust estate when they have performed services for the benefit of the estate on the theory that such at-

torney "has at least acted the part of a trustee in relation to the common interest." In *Siebert* v. *Minneapolis & St. L. Railway Co.,* 58 Minn. 58, the court considered the question whether attorneys for bondholders who were brought into the case were entitled to compensation for services rendered for the common benefit of the beneficiaries. The court applied the doctrine that *such attorneys who rendered services to the estate have performed the services which the trustee might have performed* and would be allowed to charge the trust estate and the position of the attorneys was not any different. The court said on page 64:

> "And if, for any reason, the bondholders are permitted to appear in the action for the purpose of protecting the trust property, and do, in whole or in part, what the trustee might have thus done, it seems to us that there can be no doubt of the power of the court, upon a proper showing, to make the same reimbursement to them which it might have made to the trustee and he performed the same services and incurred similar expenses. This does not mean that both should be paid for the same thing, but that, after determining the amount which should be allowed for expenses necessarily or reasonably expended in preserving and protecting the trust property, the court may apportion the amount between the trustee and the bondholders, or award it all to one of them, according to the equities of the case."

These cases illustrate the proposition of law which is completely overlooked by Judge Chestnut that *litigation involving a trust estate,* where beneficiaries are brought in and are compelled to participate in the litigation, *stands in a different class and category* from the class of cases where a creditor maintains his suit to bring in a fund before the court. Such cases have no application to the instant case. *Such jurisdiction does not exist on the theory that a "fund" is involved but on the theory*

that a Trust is involved (*Wallace* v. *Fiske,* 80 F. (2) 897, 901, 902). Here, the Act provided that notice be given to all parties in interest and that they are all entitled to a hearing. It would be unreasonable to expect that individual investors should be brought into a proceeding involving a trust and be compelled to defend their rights without having the trust estate, which invoked the proceeding, bear the expenses.

(b) The Special Court was also vested with the general power of a Court of Bankruptcy, and the power to allow the compensation was inherently in such court in the absence of any restriction by the Act.

We have shown that Section 1213 conferred on the Special Court the general power of a court of bankruptcy in addition to the equity powers. *The power of a court of bankruptcy to allow compensation is not limited or restricted.* Its *"jurisdiction"* or *"power"* is without limitation (Collier on Bankruptcy, 13th Ed. 1940, Vol. II, Sections 23.03 and 23.04). The court overlooked that it was vested with the *power and authority of a combined equity and bankruptcy court* by Section 1213 of Chapter XV under the Amendment to the Bankruptcy Act.

(c) It would be a dangerous precedence to allow a debtor to pay out of the debtor's estate all expenses to put over its Plan and to deny expenses to creditors who are brought into the proceedings to protect their rights.

This court is not unfamiliar with many reorganizations where consents as large as 98 per cent were obtained and yet, at the instance of a *single* bondholder, the court declared the plan unfair and inequitable. Under the early decisions under Section 77B courts have

adopted the theory that as long as a required number of creditors or stockholders consented to the plan it is an indication of its fairness and courts must approve such plan. This doctrine was repudiated here in *Case* v. *Los Angeles Lumber Products Co.,* 308 U. S. 106, and in a line of cases followed by the various circuits. To enable a court to pass on the fairness of a plan of adjustment it is necessary that opportunity be given to investors to present their views to the court. If such means be denied by casting the burden of the expense on the creditor it is a foregone conclusion that any plan proposed by a large corporation, which has the only power to promise compensation, will be one-sided. In *Sofian* v. *Congress Realty Co.,* 98 F. (1) 499, the court said:

> "Even if a large majority of creditors have approved a plan, that is of no avail to sustain it if it is unfair, indiscriminatory, inequitable or not feasible. * * * In many reorganization proceedings such as this, the rights of small, scattered and thoroughly discouraged bondholders are involved. Often they are unable to employ counsel to protect their rights."

If it be true, that the Act prohibits the court from compensating those who render service for the protection of the "small, scattered and discouraged creditors" and *will only compensate those who are employed by the proponents of the plan,* then it is a foregone conclusion that the court will not have the benefit and assistance of counsel representing creditors to bring forth such facts to the attention of the court upon which it may arrive at a proper conclusion on the fairness of the plan. A plan of adjustment is not any different than a plan of reorganization. In both cases the court can arrive at a determination upon facts and evidence brought out by the attorneys in the case. It goes without saying that attorneys who are compensated by the petitioner

will bring out the facts to sustain the petition. In order to have a thorough understanding of the issues involved and bring out the necessary facts a court must be possessed of the power to compensate attorneys for other creditors who will assist and aid it in arriving at a just decision. We believe that this is what prompted the court to say in *Re Watco Corporation,* 95 F. (2d) 249, that *"it is as important that fees for meritorious services actually rendered and necessary to effectuate a reorganization should be allowed as it is that the court should prevent the undue enrichment of attorneys for services of no value to the debtor."* This view was also adopted in *Re Irving-Austin Bldg. Corp.,* 100 F. (2) 574.

For the foregoing reasons we urge the allowance of the Writ.

Respectfully submitted,

MEYER ABRAMS,
Petitioner and Counsel Per Se.

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MEYER ABRAMS,
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v.

LEHIGH VALLEY RAILROAD COMPANY, et al.

Brief on Behalf of Respondent Opposing Petition for Writ of Certiorari.

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TABLE OF CONTENTS.

	Page
PRELIMINARY STATEMENT	1
OPINION OF THE COURT BELOW	2
QUESTIONS PRESENTED	2
REASONS FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI	3
ARGUMENT	4
I. In View of the Limited Application of Chapter XV, This Petition for Certiorari Presents a Question of No Public Interest	6
II. Chapter XV Contains No Specific Authority for an Order by a Special Court Sitting to Administer It Directing a Petitioning Railroad to Pay Fees to Counsel Not Employed by It	7
III. The Limited Character of the Jurisdiction Conferred Upon a Special Court Sitting to Administer Chapter XV Precludes the Conclusion That That Court Had Authority to Enter an Order Directing the Petitioning Railroad to Pay an Attorney Retained by One of Its Bondholders and Not by It	8
IV. The Contrast Between Chapter XV and Other Chapters of the Bankruptcy Act Makes It Clear That Congress Did Not Intend That the Special Court Below Should Have the Authority to Direct the Petitioning Railroad to Pay an Attorney for an Individual Bondholder	12

TABLE OF CONTENTS—Continued.

Page

V. The Power of Any Court to Order Payment of Compensation to an Attorney by Anyone Except the Client Whom He Represents Can Be Exercised Only When There Is Before the Court a Fund From Which the Fee Can Be Paid 13

VI. The Argument in Support of the Petition Fails to Establish Any Defect in the Conclusion of the Court Below 15

CONCLUSION 16

TABLE OF CASES CITED.

Page

In re Baltimore & Ohio Railroad Company, 29 F. Sup. 608 (D. Md. 1933) 6

In re Baltimore & Ohio R. R., 34 F. Sup. 154 (D. Md. 1940) 2, 6, 15

In re Chicago Memphis & Gulf Railroad Company (N. D. Ill., unreported) 6

In re Forty-One Thirty-Six Wilcox Building Corporation, 100 F. (2d) 588 (C. C. A. 7th, 1938) 14

In re Montana W. & S. Railroad Company, 32 F. Sup. 200 (D. Mont. 1940) 6

In re National Carbon Co., 241 Fed. 330 (C. C. A. 6th, 1917) 13

In re Peoria & Eastern Railway Company (S. D. N. Y., unreported) 6

In re Veler, 249 Fed. 633 (C. C. A. 6th, 1918) 13

In re Wichita Falls & Southern Railway Company, 30 F. Sup. 750 (N. D. Texas, 1939) 6

STATUTES CITED.

Page

Chapter X, Subchapter XIII, of the Bankruptcy Act, 11 U. S. C. A. § 641 ff..... 12

Chapter XV of the Bankruptcy Act:

Section 700, 11 U. S. C. A. § 1200.....5, 8, 9, 10

Section 710, 11 U. S. C. A. § 1210 ..... 4, 11

Section 713, 11 U. S. C. A. § 1213.....5, 9, 10

Section 715, 11 U. S. C. A. § 1215.....5, 8, 14

Section 721, 11 U. S. C. A. § 1221..... 4

Section 725, 11 U. S. C. A. § 1225 .....4, 7, 11, 15

Section 755, 11 U. S. C. A. § 1255 6

Section 77 of the Bankruptcy Act (dealing with railroad reorganizations) as amended, 11 U. S. C. A. § 205 (c) (12)..... 12

Bankruptcy Act, Chapter XV, (as added July 28, 1939 c. 393, 53 Stat. 1135, 11 U. S. C. A. § 1200 ff)..... 1

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v.

LEHIGH VALLEY RAILROAD COMPANY ET AL.

BRIEF ON BEHALF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI.

PRELIMINARY STATEMENT.

This is an appeal from an order (R. 14) entered on October 21, 1940 by a Special Court convened in the Eastern District of Pennsylvania to hear a petition for adjustment of debt of railroad corporations under the provisions of Chapter XV of the Bankruptcy Act (as added July 28, 1939 c. 393, 53 Stat. 1135, 11 U. S. C. A. § 1200 ff.), which established judicial machinery for adjusting the debts of railroad corporations.

The proceedings before the Special Court were initiated on August 7, 1939 by Lehigh Valley Railroad Company (to be referred to as "Lehigh") and certain of its subsidiaries. Those companies filed petitions for modification of their interest charges and principal maturities and for approval of a plan of debt adjustment in accordance with Chapter XV.

Meyer Abrams, an attorney (to be referred to as "Petitioner") appeared in those proceedings solely because he was retained to represent one individual holding bonds of Lehigh.

After approval by the Special Court of the proposed plan of adjustment (34 F. Sup. 750) the Petitioner asked the Court below to compel Lehigh to pay him a fee, despite the admitted fact that he had never been employed by or represented it in the proceeding for adjustment of debt. Lehigh objected to such an order (R. 14). The Special Court entered an order approving various amounts to be paid to various counsel whom Lehigh had employed or agreed to pay, but held that under the terms and intent of Chapter XV it had no jurisdiction to entertain petitions for compensation by persons who had not been employed by Lehigh, the debtor railroad. Petitioner seeks review of that ruling.

Chapter XV became effective July 28, 1939 and provides that the jurisdiction conferred by it shall not be exercised after July 31, 1940 except in a proceeding initiated by filing a petition under the Act on or before that date.

OPINION OF THE COURT BELOW.

The Opinion of the Court below has not been reported. As authority for the ruling now challenged it relied upon an opinion dealing with the identical point, *In re Baltimore & Ohio R. R.*, 34 F. Sup. 154 (D. Md. 1940).

QUESTIONS PRESENTED.

1. In view of the limited scope of Chapter XV, does the present petition present a question of sufficient public interest to justify review by this Honorable Court of the action of the Special Court in declining to order payment of a fee to the Petitioner?

2. In view of the limited and special character of the jurisdiction conferred upon the Special Court by Chapter XV, had the Special Court the power to order the debtor railroad to pay a fee to the Petitioner?

3. Is not the fact that the Special Court had in its possession or control no fund or money whatsoever fatal to the Petitioner's contention that the Special Court should have ordered the debtor railroad to pay a fee to him?

REASONS FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI.

1. The present case arises under Chapter XV, which was limited by its terms to an effective life of one year during which petitions under it might have been filed. The limited scope of the Act makes it evident that questions concerning the right of counsel for dissenting interests to have ordered the payment of fees to him are matters of no public interest, with which this Honorable Court need not concern itself.

2. The limited and special character of the jurisdiction created by Chapter XV makes it impossible to infer that in enacting it Congress intended that a Special Court, acting under its terms, should have the authority to order a debtor railroad, petitioning for relief under it, to pay fees to persons not employed by the debtor.

3. Under the terms of Chapter XV, no fund whatsoever comes before a Special Court convened under its terms and hence the Court has no authority to order payments which the debtor railroad has not agreed to make.

ARGUMENT.

The Petitioner is an attorney who appeared in the proceedings below to represent an individual bondholder. Lehigh has never agreed and objects to its paying his fee. The Court below held that it had no power to compel payment. The Petition for Certiorari questions that conclusion.

The questions presented by this Petition involve solely a construction of the terms and scope of the Act of July 28, 1939, Chapter XV of the Bankruptcy Act. Although that Act is included in the Bankruptcy section of the United States Code, its provisions and purposes differ radically from the ordinary bankruptcy or reorganization procedure. It creates only a legal procedure for giving effect to a plan for relief of a debtor railroad which has been worked out by the railroad itself. A railroad may take advantage of the Chapter's provisions only if it has itself prepared a plan for adjustment of its debt (Section 710, 11 U. S. C. A. § 1210) and if the plan has been approved by substantial percentages of affected persons and by the Interstate Commerce Commission; and the only function of the Court prescribed in the Statute is to approve or disapprove the plan. Specific tests are prescribed for approval and confirmation (Section 725, 11 U. S. C. A. § 1225). While it is true that the Special Court may itself propose modifications in the plan (Section 721, 11 U. S. C. A. § 1221), such modifications can be effective only if they are agreed to by affected holders of the railroad's securities and by the Interstate Commerce Commission (*Ibid*).

The only affirmative action prescribed by the Act to be taken by the Court in connection with a plan submitted to it is a direction that if the Court approves the plan, it shall make the plan binding upon all security holders of the petitioning railroad (Section 725, 11 U. S. C. A. § 1225).

The jurisdictional provisions of the Act reflect clearly its limited character. Most important is the provision of Section 715 (11 U. S. C. A. § 1215) which provides that nothing in the Act "shall be construed to authorize the [Special Court] to appoint any trustee or receiver for [the properties of the petitioning railroad] or any part thereof, *or otherwise take possession of such properties or control the operation or administration thereof.*" (Emphasis supplied.)

Section 700 (11 U. S. C. A. § 1200) confers upon courts of bankruptcy original jurisdiction "for postponements or modifications of debt, interest, rent, and maturities or for modifications of the securities or capital structures of railroads."

Section 713 (11 U. S. C. A. § 1213) provides that the Special Court after its convening "shall be vested with and shall exercise all the powers of a district court sitting in equity and all the powers as a court of bankruptcy *necessary to carry out the intent and provisions of this chapter, . . .*" (Emphasis supplied.)

Section 715 (11 U. S. C. A. § 1215) provides that after approval of the petition the Special Court "shall have exclusive jurisdiction of the [petitioning railroad] and of its property wherever located *to the extent which may be necessary to protect the same against any action which might be inconsistent with [the plan of adjustment proposed] or might interfere with the effective execution of said plan if approved by the court, or otherwise inconsistent with or contrary to the purposes and provisions of this chapter: . . .*" (Emphasis supplied.)

By its terms the Act permits bankruptcy courts to exercise the limited jurisdiction conferred only if petitions

for adjustment of debt were filed between July 28, 1939 and July 31, 1940 (Section 755, 11 U. S. C. A. § 1255).

I. In View of the Limited Application of Chapter XV, This Petition for Certiorari Presents a Question of No Public Interest.

This is not an application involving a question important to general bankruptcy practice. The effective life of Chapter XV is little more than a year. Except in the cases of petitions for adjustment of debt filed before July 31, 1940, the Act is dead. A determination by this Court of its scope will have no practical effect for the future. Counsel have been able to find only five cases other than the present one in which jurisdiction of a Special Court has been invoked,[1] and in at least one of them the questions now raised have already been decided (B. & O. case, 34 F. Sup. 154).

In these circumstances it is manifest that interpretation of the Act is not a matter of great moment and has little public interest. Counsel submit that the petition for a Writ of Certiorari should be denied for that reason.

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[1] In re Baltimore & Ohio Railroad Company, 29 F. Sup. 608 (D. Md. 1939);

In re Wichita Falls & Southern Railway Company, 30 F. Sup. 750 (N. D. Texas, 1939);

In re Montana W. & S. Railroad Company, 32 F. Sup. 200 (D. Mont. 1940);

In re Chicago Memphis & Gulf Railroad Company (N. D. Ill., unreported);

In re Peoria & Eastern Railway Company (S. D. N. Y., unreported); and the present case.

II. Chapter XV Contains No Specific Authority for an Order by a Special Court Sitting to Administer It Directing a Petitioning Railroad to Pay Fees to Counsel Not Employed by It.

Counsel for the Petitioner makes little effort to argue that the order denied him by the Special Court sitting below is authorized expressly by Chapter XV. In fact careful examination of the Act will show that the only reference to fees and expenses in the entire chapter is contained in Section 725 (6) [11 U. S. C. A. § 1225 (6)]. That section provides that as a condition to its confirmation of the plan the Special Court, sitting to administer Chapter XV, must find that the petitioning railroad has disclosed or will disclose to it all amounts or considerations directly or indirectly paid or to be paid by the railroad and that such amounts or considerations are fair and reasonable.

It is manifest that this provision gives the present Petitioner for a Writ of Certiorari no comfort or support. Its sole purpose is to require scrutiny by the Special Court of the circumstances under which the petitioning railroad has procured acceptance of its plan and of the amounts or considerations which the petitioning railroad has paid or promised to pay in the course of its procuring that acceptance. Presumably if the Court should find that the petitioning railroad had paid or promised to pay too much or if the cost of promulgating and giving effect to a plan was disproportionate to its prospective benefits, the Court might refuse to approve the plan submitted unless the payments promised were reduced. But this is the most that can be said for this provision. It certainly is not a specific direction to the Special Court to allow fees to persons whom the petitioning railroad had not undertaken to pay.

The present petitioner is just such a person. He was retained by an individual bondholder. He appeared in the hearings upon the plan submitted to represent the interest of that bondholder. From that bondholder he should procure his compensation. Certainly Congress has not expressly directed the Special Court sitting to administer Chapter XV to order the petitioning railroad to pay him.

III. The Limited Character of the Jurisdiction Conferred Upon a Special Court Sitting to Administer Chapter XV Precludes the Conclusion That That Court Had Authority to Enter an Order Directing the Petitioning Railroad to Pay an Attorney Retained by One of Its Bondholders and Not by It.

We have already pointed out that the only jurisdiction conferred by Chapter XV upon a Special Court, sitting to administer it, is to make effective a preconceived arrangement for postponement or modification of debt, interest, principal, maturities, etc., (Section 700, 11 U. S. C. A. § 1200). In administering the Act, the Special Court is expressly forbidden by its terms to take possession of any property of the petitioning railroad or to control the operation or administration of that property (Section 715, 11 U. S. C. A. § 1215).

This latter provision is the clearest indication that the Special Court below concluded rightly that Congress did not intend to confer upon it the power to direct Lehigh, the petitioning railroad, to pay an attorney whom it had not agreed to pay and whom it had not even employed. It seems too clear for argument that had the Court directed Lehigh to pay such a person, it would have been controlling the operation or administration of Lehigh's property—its cash. Lehigh's counsel stated expressly that Lehigh ob-

jected to paying the present petitioner for Writ of Certiorari, (R. 14). Any order by the Special Court over this objection clearly would have been an effort to control the administration of Lehigh's assets; and this was expressly forbidden by Chapter XV.

But in any case the jurisdiction of the Special Court conferred by Chapter XV was so limited in its scope that the Court could not have directed payment by Lehigh to an attorney who was a volunteer in the proceeding for adjustment of debt and who did not claim that Lehigh had employed him or undertaken to pay him. In this connection counsel for the Petitioner urges that Chapter XV conferred upon the Special Court the jurisdiction of a Court of Bankruptcy (Section 700, 11 U. S. C. A. § 1200) and of a Court of Equity (Section 713, 11 U. S. C. A. § 1213); and from these bare phrases, jerked violently from their context, he argues that the general powers of the Court were such that it must have had the authority to order Lehigh to pay a fee to an attorney whom Lehigh had not employed or agreed to pay. He argues that the Special Court must have had power to order payment of the fee since a Court of Bankruptcy or a Court of Equity in a reorganization or receivership proceeding would have had the power to order payment upon a similar application.

This argument ignores wholly the limited character of Chapter XV, the fact that the Chapter expressly forbids the Court to take possession or to control the administration of any property of the petitioning railroad, and the very setting in which these references in Chapter XV to equity and bankruptcy powers were embedded.

Counsel have already pointed out that the only jurisdiction conferred upon the Special Court was to give effect to a preconceived plan for modification of debt. This lim-

itation was expressly linked to the reference to "Courts of Bankruptcy" (Section 700, 11 U. S. C. A. § 1200). The reference to a court of equity was followed in the same breath by the limitation that such powers should be only those "*necessary to carry out the intent and provisions*" of Chapter XV (§ 713, 11 U. S. C. A. § 1213). Counsel for the Petitioner omits to refer to either of these qualifications.

There is no conceivable reason for supposing that the power of the Court to give effect to a preconceived plan for adjustment of debt filed by a petitioning railroad under Chapter XV includes by implication or inference the power to order the petitioning railroad to pay a fee to some attorney who appears in the proceeding at the behest of an individual bondholder; and indeed the petition for Certiorari suggests no reason for supposing that the power to order payment of fees is a necessary incident to the power to give effect to a plan for adjustment of debt. The petition relies wholly upon the reference in Chapter XV to the powers of Courts of Equity or of Bankruptcy, neglecting the context of that reference and paying no attention to pertinent provisions of Chapter XV. It follows that the argument must fail.

It is true that the Petitioner makes some reference to the reasons which move a Court of Equity to direct payment to attorneys for intervening parties if they have conserved or augmented a fund in the possession of the Court. Counsel propose to demonstrate that those cases are wholly inapplicable because under the terms of Chapter XV no fund comes before the Special Court. But passing that for the moment, they wish to point out that the reasons which move a Court of Equity to grant such an order in receivership proceedings are inapplicable here. Before the protec-

tion of Chapter XV can be invoked, the petitioning railroad must have procured assents to the proposed plan by creditors holding two-thirds of the aggregate amount of the claims affected by the plan, including at least a majority of the aggregate amount of the claims of each affected class [Section 710 (3), 11 U. S. C. A. § 1210 (3)]. The plan must have been examined and aproved by the Interstate Commerce Commission [Section 710 (2), 11 U. S. C. A. § 1210 (2)], and the Commission must have made comprehensive findings concerning the adequacy and fairness of the plan (*Ibid.*). In examining the plan, the Court is directed to make similar comprehensive findings irrespective of the action of the Interstate Commerce Commission [Section 725 (3), 11 U. S. C. A. § 1225 (3)] and of the fact that security holders affected by the plan have assented to its terms (*Ibid.*); and the Court must find, before approving the plan, that the plan itself has been approved by creditors affected by it holding more than three-fourths of the aggregate amount of the claims affected, including at least three-fifths of the aggregate amount of the claims of each affected class [Section 725 (2), 11 U. S. C. A. 1225 (2)].

It is manifest that the protection expressly granted to all security holders by these requirements for repeated and comprehensive scrutiny of the plan makes unnecessary any stimulus to shareholders and their attorneys in the shape of assurance that if they can compel some modification of the plan the fees of the attorneys will be paid by the petitioning railroad. This is not a case where a plan must be formulated and tested under the supervision of the Court. A plan submitted for approval under the terms of Chapter XV must have been tumbled about and predigested before it even comes before the Court. The Court itself must

analyze it carefully, as must t[he Interstate Commerce Com-
mission. It seems evident th[at any objection to the plan
made before submission or in [Court is essentially an arm's
length negotiation between th[e petitioning railroad and its
security holders, be they few [or many, and there is no rea-
son for ordering the petition[ing road to pay counsel for
individual bondholders who a[ppear voluntarily and for the
sake of protecting individual [interests.

IV. The Contrast Between Cha[pter XV and Other Chapters of the Bankruptcy Act M[akes It Clear That Congress Did Not Intend That the Special Court Below Should Have the Authority to Di[rect the Petitioning Railroad to Pay an Attorney for an Individual Bondholder.

Counsel have already dem[onstrated that there is noth-
ing in Chapter XV expressly conferring upon the Special
Court below the power which i[t decided it did not have. The
argument for granting certi[orari therefore hangs solely
upon the proposition that Ch[apter XV, defining jurisdic-
tion of the Court below, infer[entially authorized the order
which the Court below refuse[d. But counsel have already
shown that the purposes and p[rovisions of the Act negative
the inference that Congress [intended to confer any such
power. And that negation is [amplified greatly when Chap-
ter XV is contrasted with ot[her provisions of the Bank-
ruptcy Act defining the powe[rs of a Bankruptcy Court in
other proceedings for the rel[ief of debtors. Both Section
77 (dealing with railroad reo[rganizations) as amended [11
U. S. C. A. § 205 (c) (12)] a[nd Section 77b (dealing with
corporate reorganizations) as [amended similarly (Chapter
X, subchapter XIII, 11 U. S. [C. A. § 641 ff.) contain elabo-
rate provisions for the allowa[nce of compensation to attor-

neys for intervening parties. There is not a word of similar tenor in Chapter XV. The conclusion seems inescapable that, considered with the unique features of the purpose and scope of Chapter XV, this omission is fatal to the argument that one can infer an intention of Congress that a Special Court sitting under Chapter XV should have the authority to order the petitioning railroad to pay counsel for intervening parties.

V. The Power of Any Court to Order Payment of Compensation to an Attorney by Anyone Except the Client Whom He Represents Can Be Exercised Only When There Is Before the Court a Fund From Which the Fee Can Be Paid.

Chapter XV, standing alone or examined in conjunction with other portions of the Bankruptcy Act shows clearly that no express or implied statutory authority was conferred upon the Special Court below to order the payment of a fee to any attorney who has not been employed by the petitioning railroad but who seeks an order to compel the payment of his fee. In attempting to find authority where there is none, counsel for the Petitioner argues that the power to order such a payment is inherent in the Court below as a Court of Equity.

Counsel submit respectfully that the decided cases show beyond a doubt that if no special statutory authority to order payment of such a fee exists, even a court sitting in equity, unlimited by the restrictive language of Chapter XV, can compel the payment of a fee to an attorney by someone other than his own client only if there is in the possession of the Court a fund over which the Court can exercise control; see *In Re National Carbon Co.,* 241 Fed. 330 (C. C. A. 6th, 1917); *In re Veler,* 249 Fed. 633 (C. C. A. 6th,

1918); *In re Forty-One Thirty-Six Wilcox Building Corporation,* 100 F. (2d) 588 (C. C. A. 7th, 1938).

That there was no fund in the control of the Special Court below is abundantly clear from the terms and purposes of Chapter XV. That Chapter differs radically from the ordinary proceeding for corporate reorganization. A petitioning railroad does not throw itself and its property into the arms of the Court. It works out its own salvation and then appears before the Court as an ordinary party litigant asking judicial aid. The aid prescribed by Chapter XV is in effect an injunction directed to security holders of the petitioning railroad and to all the world forbidding them to do anything inconsistent with the plan of adjustment proposed, if that plan be approved by the Court. No receiver is appointed, no trustee is appointed—for both appointments are expressly forbidden by the Act (§ 715, 11 U. S. C. A. § 1215). No part of the railroad property comes under the control of the Court; and the Court is forbidden to take possession of such property or to control its administration or operation (*Ibid.*).

The Chapter simply authorizes the Court to exercise *jurisdiction* over the property, not for the purpose of controlling it or administering it, but for the sole purpose of throwing around it the protection of judicial injunction against interference inconsistent in any respect with the proposed plan of adjustment. There is in the possession of the Court no fund, no property of any kind, out of which payment of a fee to an attorney of an intervening security holder can be ordered. An order by the Special Court directed to the petitioning railroad to pay such a fee would be a plenary order not authorized by statute and not within the intent of the Act.

Counsel have been able to find no case and the petitioner for Certiorari has cited none which sustains the authority of any Court of Equity to issue such an order. It follows that the argument for the petitioner fails and that he has shown no power in the Special Court sitting below to order the payment of a fee to him.

VI. The Argument in Support of the Petition Fails to Establish Any Defect in the Conclusion of the Court Below.

Counsel for the Petitioner argues that the Court below held improperly that Section 725 (6) of Chapter XV [11 U. S. C. A. § 1225 (6)] limits the power of a Special Court to grant the order which Petitioner sought. An examination of the opinion *In re Baltimore & Ohio R. R. Co.*, 34 F. Sup. 154, upon which the Court relied, shows that this was not the holding of the Court. The Court observed correctly that this was the only section of Chapter XV dealing with fees, and hence inferred that Congress intended that the Court should have no other power concerning fees. To meet this proposition, Counsel for the Petitioner suggests nothing. Counsel then argues that the Special Court had power to award the order because it had the powers of a court of Bankruptcy or of Equity. This ignores the qualification of Chapter XV that these powers are given only for the purposes of the Chapter, which is distinctly limited in character. Counsel for the Petitioner argues that the Special Court had constructive possession of Lehigh's property but ignores the provision of Chapter XV that the Court *could not have taken* such possession—and so fails to surmount the difficulty that there was no fund out of which payment of a fee could have been ordered. The sum of the argument

is that it points to no weakness in the conclusion of the Special Court.

CONCLUSION.

Counsel for the Respondent submit respectfully that the argument in support of the Petition for Certiorari can succeed only if it shows that from the terms of Chapter XV there appears an express or implied grant by Congress to the Court below of the power to order Lehigh, over its objection, to pay to Petitioner a fee for his services to an individual bondholder; that it is manifest that there was before the Court no fund from which payment of such a fee could have been ordered; that Chapter XV, in its terms and by contrast with other provisions for the relief of debtors, demonstrates that Congress intended that the Special Court should have no such power; and that the question which Petitioner presents is of no public interest or importance which can justify this Honorable Court's taking jurisdiction of the matter.

They respectfully request that the Petition for Writ of Certiorari be denied.

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